

Bill Number: TX83RHB 1473
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A BILL TO BE ENTITLED
 AN ACT

relating to water quality improvement and pollution reduction through beverage container recycling incentives; assessing a fee; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 376 to read as follows:

CHAPTER 376. TEXAS BEVERAGE CONTAINER RECYCLING INCENTIVE PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 376.001. DEFINITIONS. In this chapter:

(1) "Beverage" means an alcoholic, nonalcoholic, carbonated, or noncarbonated drink prepared in liquid, ready-to-drink form and intended for human consumption. The term includes:

- (A) beer;
- (B) ale;
- (C) malt liquor;
- (D) other drinks produced by fermenting malt;
- (E) wine coolers;
- (F) soda;
- (G) water, including mineral water and vitamin water;
- (H) carbonated water, including carbonated mineral water;

- (I) carbonated soft drinks;
- (J) noncarbonated soft drinks and sport drinks;
- (K) noncarbonated fruit drinks;
- (L) energy drinks;
- (M) coffee and tea drinks; and
- (N) carbonated fruit drinks.

(2) "Beverage container" means a glass, metal, or plastic vessel that is hermetically sealed or capped and that contains a beverage at the time it is sold or offered for sale.

(3) "Consortium" means the Texas Beverage Container Recycling Consortium.

(4) "Consumer" means a person who purchases a beverage in a beverage container for the person's own use or consumption. The term includes a lodging, eating, or drinking establishment if beverages are generally consumed on the establishment's premises and does not include a person who purchases the beverage from the establishment for consumption on the premises.

(5) "Distributor" means a person who distributes beverages in beverage containers to retail dealers.

(6) "Incentive program" means the Texas beverage container recycling program established under this chapter.

(7) "Infant formula" means any liquid food sold as an alternative for human milk for the feeding of infants.

(8) "Medical food" means a food or beverage that is formulated to be consumed or administered under the supervision of a physician and that is intended for specific dietary management of diseases or health conditions for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation. The term also includes any product that meets the definition of "medical food" under Section 5(b)(3), the Food, Drug, and Cosmetic Act (21 U.S.C. Section 360ee).

(9) "Redemption center" means an operation approved by the consortium to redeem beverage containers under this chapter and includes a manned operation or a mechanical device that accepts empty beverage containers and issues a cash refund or a redeemable credit slip with a value not less than the container's refund value.

(10) "Refund" means a payment by a redemption center under Section 376.201 to a person who presents a beverage container at the redemption center.

(11) "Retail dealer" means a person who sells a beverage in a beverage container to a consumer.

Sec. 376.002. TEXAS BEVERAGE CONTAINER RECYCLING CONSORTIUM. (a) The consortium is an association formed to administer the incentive program.

(b) The consortium consists of nine members appointed by the governor as follows:

3-21 (1) one distributor of alcoholic beverages;
 3-22 (2) one distributor of nonalcoholic beverages;
 3-23 (3) one recycler;
 3-24 (4) one beverage retailer;
 3-25 (5) one representative from the waste industry;
 3-26 (6) one redemption center operator;
 3-27 (7) one container processor or remanufacturer;
 4- 1 (8) one representative from the comptroller's office;
 4- 2 and
 4- 3 (9) one representative from the general public.
 4- 4 (c) The members serve staggered terms of three years with
 4- 5 three members' terms expiring June 1 of each year.
 4- 6 (d) The members shall appoint an executive director to
 4- 7 oversee the consortium's operation.
 4- 8 Sec. 376.003. ADMINISTRATION AND RULES. (a) In
 4- 9 administering the incentive program, the consortium shall:
 4-10 (1) enter into appropriate agreements approving
 4-11 redemption centers under Section 376.151;
 4-12 (2) enforce compliance with the provisions of this
 4-13 chapter;
 4-14 (3) develop and implement a marketing plan to provide
 4-15 information and educate consumers about the incentive program;
 4-16 (4) conduct any audit of the incentive program the
 4-17 comptroller determines is necessary;
 4-18 (5) develop an operating budget for the incentive
 4-19 program;
 4-20 (6) ensure the solvency of the incentive program's
 4-21 account;
 4-22 (7) develop a system for reimbursement of deposits and
 4-23 refunds and for distribution of handling fees;
 4-24 (8) develop a system for monitoring the number of
 4-25 containers sold by distributors and the number of containers
 4-26 returned to redemption centers and curbside recycling centers;
 4-27 (9) develop a system to prevent fraudulent use of the
 5- 1 incentive program;
 5- 2 (10) administer an account as provided by Section
 5- 3 376.104;
 5- 4 (11) adopt procedures and forms necessary to implement
 5- 5 this chapter; and
 5- 6 (12) develop and maintain a publicly accessible
 5- 7 website to provide information about the program, including
 5- 8 redemption center locations.
 5- 9 (b) The comptroller, after consultation with the
 5-10 consortium, may adopt rules necessary to implement this chapter.
 5-11 Sec. 376.004. CRIMINAL PENALTIES. A person commits an
 5-12 offense if the person knowingly violates Section 376.051, 376.101,
 5-13 376.102, 376.201, or 376.204. An offense under this section is a
 5-14 Class C misdemeanor.
 5-15 Sec. 376.005. REPORT TO LEGISLATURE. Not later than
 5-16 November 1 of each year, the consortium shall submit a report to the
 5-17 governor, lieutenant governor, speaker of the house of
 5-18 representatives, the comptroller, the Texas Commission on
 5-19 Environmental Quality, and the committee in each house of the
 5-20 legislature that has primary jurisdiction over environmental
 5-21 matters about the progress and success of the incentive program.
 5-22 SUBCHAPTER B. REFUND VALUE AND LABELING OF BEVERAGE CONTAINERS
 5-23 Sec. 376.051. REFUND VALUE AND LABEL REQUIRED. (a) Except
 5-24 as provided by Subsection (b), a person may not distribute, sell, or
 5-25 offer for sale in this state a beverage container unless the
 5-26 container:
 5-27 (1) has:
 6- 1 (A) a fluid capacity of less than 24 ounces and a
 6- 2 refund value of five cents; or
 6- 3 (B) a fluid capacity of at least 24 ounces and a
 6- 4 refund value of 10 cents; and
 6- 5 (2) is labeled as required by Section 376.052.
 6- 6 (b) A person may distribute, sell, or offer for sale in this
 6- 7 state a beverage container that does not have a refund value if:
 6- 8 (1) the container has a fluid capacity of more than one
 6- 9 gallon; or
 6-10 (2) the container contains:
 6-11 (A) a beverage that consists of milk or of 100
 6-12 percent fruit or vegetable juice; or
 6-13 (B) medical food or infant formula.
 6-14 Sec. 376.052. LABELING. (a) A beverage container required

6-15 to have a refund value under Section 376.051 that is distributed or
6-16 offered for sale in this state must have legibly stamped, labeled,
6-17 or embossed on the container:
6-18 (1) the refund value of the container;
6-19 (2) the name "Texas" or the abbreviation "TX"; and
6-20 (3) other language as required by the consortium.
6-21 (b) Any beverage container intended for sale in this state
6-22 must be printed, embossed, stamped, labeled, or otherwise marked
6-23 with a universal product code or similar machine-readable indicium.
6-24 SUBCHAPTER C. COLLECTION OF DEPOSIT
6-25 Sec. 376.101. COLLECTION OF DEPOSIT BY DISTRIBUTOR AND
6-26 RETAIL DEALER. (a) A distributor shall collect a deposit of 5 or 10
6-27 cents, as established by Section 376.051, from a retail dealer for
7- 1 each beverage container that the distributor sells to the retail
7- 2 dealer.
7- 3 (b) A retail dealer shall collect a deposit of 5 or 10 cents,
7- 4 as established by Section 376.051, from a consumer for each
7- 5 beverage container that the retail dealer sells to the consumer.
7- 6 (c) A retail dealer who sells one or more beverage
7- 7 containers to a consumer shall list the beverage container deposit
7- 8 paid as a separate line item on a receipt given to the consumer. The
7- 9 deposit may not be included in any sales tax calculation.
7-10 Sec. 376.102. REMITTANCE OF DEPOSITS BY DISTRIBUTOR. Not
7-11 later than the fifth day of each month, a distributor shall remit to
7-12 the consortium the deposits collected by the distributor under
7-13 Section 376.101 during the preceding month.
7-14 Sec. 376.103. MONTHLY REPORT. (a) Not later than the fifth
7-15 day of each month, a distributor who collects a deposit under
7-16 Section 376.101 shall report to the consortium, on a form approved
7-17 by the consortium:
7-18 (1) the total amount of deposits collected during the
7-19 preceding month; and
7-20 (2) the number of beverage containers sold during the
7-21 preceding month separated by deposit amount and material of
7-22 container.
7-23 (b) The consortium may require a distributor to include in
7-24 the report required by Subsection (a) other information the
7-25 consortium considers necessary.
7-26 (c) The information contained in the report required by this
7-27 section is confidential and may not be disclosed by the consortium
8- 1 or an officer or employee of the consortium.
8- 2 Sec. 376.104. INCENTIVE PROGRAM ACCOUNT. (a) Deposits
8- 3 collected under this chapter shall be deposited to the credit of an
8- 4 account maintained by the consortium. Money in the account may be
8- 5 allocated only for:
8- 6 (1) reimbursements and handling fees paid to
8- 7 redemption centers or curbside recycling programs, as applicable;
8- 8 (2) administration of this chapter;
8- 9 (3) providing information and educating consumers
8-10 about the incentive program;
8-11 (4) the purposes authorized under Subsections (b) and
8-12 (c); and
8-13 (5) implementation of the state's water infrastructure
8-14 plan.
8-15 (b) At the end of each state fiscal biennium, two percent of
8-16 the money in the account that is unencumbered must be redistributed
8-17 to beverage distributors in proportion to the amount that each
8-18 distributor contributed to the account.
8-19 (c) On the last day of each state fiscal biennium, the
8-20 consortium shall send to the comptroller a fee in the amount of two
8-21 and one-half percent of the unencumbered balance of the account for
8-22 deposit in the state treasury to the credit of the Texas Commission
8-23 on Environmental Quality. Money deposited under this subsection
8-24 may be appropriated only for the purposes of Section 361.014(b).
8-25 The money must be allocated as provided by that subsection and each
8-26 planning region shall include in the biennial report issued under
8-27 that subsection information detailing how the money is spent. This
9- 1 subsection expires when the state recycling rate reaches 65
9- 2 percent, as determined by the comptroller based on information
9- 3 available from the consortium and local governments and regional
9- 4 planning commissions that receive money allocated as provided by
9- 5 Section 361.014(b).
9- 6 SUBCHAPTER D. REDEMPTION CENTERS
9- 7 Sec. 376.151. ESTABLISHMENT OF REDEMPTION CENTER
9- 8 AGREEMENTS. (a) To facilitate the return of empty beverage

9- 9 containers, a retail dealer, local government, or independent
 9-10 entity may establish, own, and operate a redemption center at which
 9-11 empty containers may be returned for their refund value.
 9-12 (b) The retail dealer, local government, or independent
 9-13 entity must file an application for approval of a redemption center
 9-14 with the consortium. The application must provide:
 9-15 (1) the name, mailing address, telephone number,
 9-16 e-mail address, and title of the person responsible for the
 9-17 establishment and operation of the redemption center;
 9-18 (2) the physical address of the redemption center;
 9-19 (3) the applicant's federal tax identification number,
 9-20 if applicable; and
 9-21 (4) any additional information the consortium
 9-22 requires as necessary or convenient for the implementation of this
 9-23 section.
 9-24 (c) The consortium shall approve a redemption center if it
 9-25 finds the redemption center will provide a convenient service to
 9-26 persons for the return of empty beverage containers.
 9-27 (d) The consortium at any time may review its approval of a
 10- 1 redemption center. After written notice to the person responsible
 10- 2 for the establishment and operation of the redemption center and to
 10- 3 each retail dealer located within a two-mile radius of the
 10- 4 redemption center, the consortium may, after providing the owner or
 10- 5 operator an opportunity for a hearing to verify facts and resolve
 10- 6 the matter at issue, withdraw approval of a redemption center if the
 10- 7 consortium finds the redemption center has violated any terms of
 10- 8 the approval of the redemption center.
 10- 9 (e) The consortium and applicant shall establish the
 10-10 required hours of operation for a redemption center in the approval
 10-11 under Subsection (c).
 10-12 (f) The consortium may not limit the number of redemption
 10-13 centers within a geographic area.
 10-14 SUBCHAPTER E. BEVERAGE CONTAINER REDEMPTION
 10-15 Sec. 376.201. USED BEVERAGE CONTAINER REDEMPTION. Except
 10-16 as provided by Sections 376.202 and 376.203, a redemption center
 10-17 shall accept a used beverage container that has a refund value as
 10-18 established by Section 376.051 and shall pay the refund value of the
 10-19 container in cash to the person presenting the container if the
 10-20 container is stamped, labeled, or embossed with the refund value
 10-21 and the name "Texas" or the abbreviation "TX."
 10-22 Sec. 376.202. REFUSAL PERMITTED. A redemption center may
 10-23 refuse to accept for refund:
 10-24 (1) a glass bottle that is broken to the extent that it
 10-25 would present a safety hazard when handled; or
 10-26 (2) a used beverage container that contains part of
 10-27 its original contents or other foreign matter to the extent that it
 11- 1 could present health or sanitation problems.
 11- 2 Sec. 376.203. REDEMPTION BY WEIGHT. (a) The consortium
 11- 3 shall establish:
 11- 4 (1) a procedure for providing a reimbursement based on
 11- 5 the weight of the beverage containers presented to be used in
 11- 6 circumstances in which the number of containers is so large that
 11- 7 counting the containers individually would be burdensome on a
 11- 8 redemption center or curbside recycling program;
 11- 9 (2) a per pound redemption value for containers
 11-10 composed of each material covered by this chapter that are redeemed
 11-11 in the manner described by Subdivision (1);
 11-12 (3) a per pound redemption value for unsorted
 11-13 containers composed of any material covered by this chapter that
 11-14 are collected as part of a single-stream recycling program and
 11-15 redeemed in the manner described by Subdivision (1);
 11-16 (4) a per pound handling fee to be paid to redemption
 11-17 centers for containers redeemed in the manner described by
 11-18 Subdivision (1); and
 11-19 (5) procedures for regulating the accuracy of scales
 11-20 used to weigh containers under this section.
 11-21 (b) Not more than every six months the consortium may adjust
 11-22 the per pound rates described by Subsection (a).
 11-23 Sec. 376.204. RECYCLING OF BEVERAGE CONTAINERS BY
 11-24 REDEMPTION CENTER AND CURBSIDE RECYCLING PROGRAM. A redemption
 11-25 center or curbside recycling program shall recycle the returned
 11-26 used beverage containers by:
 11-27 (1) selling the material generated by the crushed or
 12- 1 shredded used beverage containers to a processor or other end user;
 12- 2 or

12- 3 (2) another method prescribed by the consortium.
 12- 4 Sec. 376.205. REIMBURSEMENT OF REDEMPTION CENTERS BY
 12- 5 CONSORTIUM; HANDLING FEE. (a) On submission of a completed invoice
 12- 6 of refunds paid by a redemption center on a form adopted by the
 12- 7 consortium, the consortium shall pay to the redemption center an
 12- 8 amount equal to the redemption value established by Section 376.051
 12- 9 or 376.203, as applicable, plus a handling fee of:

12-10 (1) one and one-half cents for each beverage container
 12-11 redeemed by the redemption center under Section 376.201; or

12-12 (2) the per pound amount determined under Section
 12-13 376.203 for beverage containers redeemed in the manner described by
 12-14 that section.

12-15 (b) The consortium shall reimburse a redemption center
 12-16 under Subsection (a) not later than the fifth working day after the
 12-17 date the consortium receives the invoice submitted by the
 12-18 redemption center.

12-19 (c) The consortium may adjust a handling fee to account for
 12-20 changes in market conditions. The consortium may periodically
 12-21 conduct research to determine if an adjustment is necessary.

12-22 Sec. 376.206. REIMBURSEMENT OF CURBSIDE RECYCLING PROGRAM
 12-23 BY CONSORTIUM. (a) On submission of a completed report, on a form
 12-24 adopted by the consortium, indicating the number or weight, as
 12-25 applicable, of beverage containers collected by a curbside
 12-26 recycling program that are covered under this chapter, the
 12-27 consortium shall pay to the curbside recycling program an amount
 13- 1 equal to the redemption value established by Section 376.203.

13- 2 (b) The consortium shall reimburse a curbside recycling
 13- 3 program under Subsection (a) not later than the fifth working day
 13- 4 after the date the consortium receives the invoice submitted by the
 13- 5 curbside recycling program.

13- 6 Sec. 376.207. REPORTING REQUIREMENTS. Each redemption
 13- 7 center and curbside recycling program shall submit a report with
 13- 8 the submission of the completed invoice required under Sections
 13- 9 376.205 and 376.206, respectively, to the consortium, on a form
 13-10 approved by the consortium, that provides:

13-11 (1) the redemption value of beverage containers
 13-12 collected by the redemption center or curbside recycling program;

13-13 (2) the number or weight of beverage containers
 13-14 collected by the center or curbside recycling program; and

13-15 (3) an invoice or other documentation that provides
 13-16 proof that the collected recycled material was recycled in a manner
 13-17 described under Section 376.204.

13-18 Sec. 376.208. NOTICE. The consortium must provide to each
 13-19 redemption center and curbside recycling program, as applicable,
 13-20 written notice at least 30 days before implementation of a change in
 13-21 per pound rates under Section 376.204 or handling fees under
 13-22 Section 376.205.

13-23 SECTION 2. Section 151.007(c), Tax Code, is amended to read
 13-24 as follows:

13-25 (c) "Sales price" or "receipts" does not include any of the
 13-26 following if separately identified to the customer by such means as
 13-27 an invoice, billing, sales slip or ticket, or contract:

14- 1 (1) a cash discount allowed on the sale;

14- 2 (2) the amount charged for tangible personal property
 14- 3 returned by a customer if the total amount charged is refunded by
 14- 4 cash or credit;

14- 5 (3) a refund of the charges for the performance of a
 14- 6 taxable service;

14- 7 (4) finance, carrying and service charges, or interest
 14- 8 from credit extended on sales of taxable items under a conditional
 14- 9 sales contract or other contract providing for the deferred payment
 14-10 of the purchase price;

14-11 (5) the value of tangible personal property that:

14-12 (A) is taken by a seller in trade as all or part
 14-13 of the consideration for a sale of a taxable item; and

14-14 (B) is of a type of property sold by the seller in
 14-15 the regular course of business;

14-16 (6) the face value of United States coin or currency in
 14-17 a sale of that coin or currency in which the total consideration
 14-18 given by the purchaser exceeds the face value of the coin or
 14-19 currency; []

14-20 (7) a voluntary gratuity or a reasonable mandatory
 14-21 charge for the service of a meal or food products, including soft
 14-22 drinks and candy, for immediate human consumption when the service
 14-23 charge is separated from the sales price of the meal or food product

14-24 and identified as a gratuity or tip and when the total amount of the
14-25 service charge is disbursed by the employer to employees who
14-26 customarily and regularly provide the service; or

14-27 (8) a beverage container redemption deposit under
15- 1 Chapter 376, Health and Safety Code.

15- 2 SECTION 3. (a) Not later than September 1, 2014, the
15- 3 comptroller of public accounts, after consultation with the Texas
15- 4 Beverage Container Recycling Consortium, shall adopt any rules
15- 5 necessary to implement Chapter 376, Health and Safety Code, as
15- 6 added by this Act.

15- 7 (b) The requirements of and penalties imposed by Chapter
15- 8 376, Health and Safety Code, as added by this Act, do not apply to
15- 9 any person before January 1, 2015.

15-10 SECTION 4. This Act takes effect September 1, 2013.